

*Frank's Motion Is
Made Public*

**MANY OF
STATE'S
WITNESSES
CHANGE
THEIR
TESTIMONY**

Negro Woman Testifies
She

Saw Conley Run From
Alley

In Rear of Factory at
2:15 on

Afternoon of Murder

SOLICITOR IS
ATTACKED

IN DEFENSE
AFFIDAVITS

C. B. Dalton, Another Witness

for the State, Repudiates His Testimony Given Against Frank at the Trial

Notice was given Solicitor General H. M. Dorsey Friday that on April 16, twenty days from this date, and the day before the date set for his execution, an extraordinary motion for a new trial for Leo M. Frank will be filed with the criminal division of the superior court. On that day, the hearing of the motion will be commenced.

A copy of the motion, which will be filed with the court, was also served on the solicitor. This motion is replete with attacks on the solicitor and the city detectives, and much new evidence is set out in it.

Four new witnesses swear they saw Frank on the streets at the time Jim Conley claims they were together in the pencil factory disposing of the body.

Those witnesses are Samuel A. Pardee, sales manager for the Cotton States Belting and Supply Company; W. V. Green, Mrs. Jeffe and Mrs. Ethel Harris Miller, now living in Chattanooga.

The testimony of several girls, who claim to have seen the hair found on the lathe in the metal room is quoted in the motion, and they swear the hair was not that of the slain girl, as the state contends.

New interest is added to the case by the affidavit of Mary Rich, cited by the defense. Mary Rich is the negro proprietress of an eating house for negroes near the pencil factory. She testified she saw Jim Conley come running out of the alley back of the factory about 2:15 o'clock on the afternoon of Saturday, April 26. He entered her place, bought a 20-cent lunch, ate it, and left, going back toward the mouth of the alley, she swears. It is probable the defense will use this affidavit to explain the removal of the hasp from the back door of the basement, opening on the alley. That has remained one of the mysteries in the case.

The motion charges that Dr. H. F. Harris told the solicitor the latter's brother, a physician, might examine the hair of the slain girl to see if he would not sustain the opinion that it was not Mary Phagan's, and the solicitor would not consent to this.

REPUDIATES TESTIMONY.

C. Brutus Dalton, one of the most important of the state's witnesses, whose testimony tended to corroborate the details of Conley's story, repudiates the portion of his testimony damaging to Frank.

In the motion, girl witnesses against Frank repudiate their testimony and score the solicitor and the detectives. J. M. Duffy swears the solicitor induced him to say that he prevented a cut finger from bleeding in the metal room near the point where alleged blood stains were found when this was not true.

Much attention is paid in the motion to the new evidence dealing with the murder notes which has already been published.

The motion covers over sixty pages of typewritten matter. A comprehensive summary of its points and the testimony of the witnesses on which it is based is given below.

The attorneys for the defense, Luther Z. Rosser and Reuben R. Arnold, will not be prevented by the serving of the solicitor general with a copy of the motion from adding any new evidence which may later be unearthed by Detective William J. Burns and his agents, or by their own detectives.

The motion was served on the solicitor Friday largely because of an ambiguous section of the state code which led the attorneys to believe that a technicality might jeopardize their cause, if notice was not served on the solicitor at this time.

Burns declares he has discovered new evidence, and this of course will be added to the motion if it is helpful to Frank when it becomes known to the defense.

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If the solicitor does not ask an earlier hearing of the motion than that automatically set by the serving of the motion, then in all probability the execution of Frank will be automatically stayed, as there is little chance of the arguments not taking at least three days.

HAIR FEATURE TAKEN UP.

After setting out that the various points mentioned in the motion were not known to the defense at the time of the trial, despite a diligent inquiry into the various phases of the case, the attorneys first take up the question of the hair.

The finding of alleged blood spots and strands of hair alleged to be from the head of the slain girl were the two material points on which the state based its theory that Mary Phagan was murdered on the second floor of the National Pencil factory, where Superintendent Frank had his office. The defense claimed

at the trial to have rendered valueless by the testimony of various witnesses the claim that the blood was that of the slain girl, and strengthen their fight on that point by the Witness Duffy's new testimony.

On the question of the hair the de-

(Continued on Page 4, Col. 1.)

PDF PAGE 4, COLUMN 1

FRANK MOTION FOR NEW TRIAL IS
MADE PUBLIC

**DORSEY IS
NOTIFIED**

**IT WILL BE
FILED**

**THURSDAY,
APRIL 16**

(Continued from Page One.)

fense has, besides the opinion of the state's expert, who made the microscopical examination, the testimony of three women who claim the hair found on the lathe was not Mary Phagan's.

These women are Miss Jimmie Mayfield, Mrs. Cora Falta, and Miss Alice Marjorie McCoy, all employees of the factory, who knew the slain girl. Their testimony as quoted in the motion is practically the same. They swear they were shown the strands of hair found on the lathe by R. P. Barrett, or one of the interested girls, before the detectives came and took charge of it. They state positively that the hair was not that of Mary Phagan; that it was entirely too light in color and that it was not of the same texture as Mary Phagan's hair.

DR. HARRIS' EVIDENCE.

A portion of the motion dealing with the sensational statement first obtained from Dr. Harris by The Journal, and containing the defense's attack on the solicitor, follows:

Defendant shows that it has come to his knowledge, since the original motion for new trial was denied, and is a fact, that Dr. H. F. Harris, one of the state's expert witnesses, who testified at the trial as to the condition of Mary Phagan's stomach and other matters, at the instance of the solicitor general, before the trial, took the strands of hair which said Barrett claimed to have found in the metal room on the second floor, on Monday following the murder, and examined and compared them with the strands of hair which the said Harris took from the head of Mary Phagan when he performed his autopsy upon her body. The said Harris made a careful microscopic examination of the hair so taken from the body of Mary Phagan and the hair so claimed to have been found by the witness Barrett; and, as a result of said microscopic examination, said Harris discovered that the hair bore no resemblance to the hair taken from the body of Mary Phagan, either in color, texture, or other particular.

Defendant further shows that it has come to his knowledge since the original motion for new trial was denied, and is a fact, that the said Harris, before the original trial, reported said finding of fact to the solicitor general and told the solicitor general that the said hair claimed to have been found by said Barrett was not the hair of Mary Phagan. The solicitor general then told the said Harris that he would let the investigation as to the hair end there, and the said Harris, thereupon, returned to the solicitor general some of the strands of hair so claimed to have been found by Barrett. On and during the trial, said Harris, was asked what parts of Mary Phagan's body he had examined, and he concealed the fact that he had examined and compared her hair with the hair found in the factory.

MICROSCOPE NECESSARY.

It's a scientific fact that a careful microscopic examination of human hair is the only positive and certain way of identifying the same as the hair of any particular person, and that an examination by the eye, and especially from memory, is of practically no value.

This defendant shows that the witness Harris offered to permit the brother of the solicitor general, Dr. R. T. Dorsey, who was present at the original trial, assisting the solicitor general in his examination of expert witnesses, to make an examination of said hair after Harris reported that it was not Mary Phagan's hair, but that Dr. Dorsey had declined to do so.

Defendant further shows that, after the hair was delivered back to the solicitor general, he claimed to have lost it, and did not produce it at the trial, and neither this defendant, nor any of his counsel, had opportunity of seeing it or having a microscopic examination made of it to compare it with that taken from Mary Phagan's head, and neither the defendant, nor his counsel, had any knowledge whatsoever at the time of the original trial, or at the time the motion for new trial was heard, that Harris had made any such examination or had made any such report, or that the

solicitor general had stated to Harris that he would let the investigation as to the hair end there.

Notwithstanding the foregoing facts, this dependant shows that, upon the trial of the case, as appears from the record, reference to which is hereby had, one of the chief facts relied on by the state to corroborate the witness James Conley, was the alleged finding of said hair by the witness Barrett. The solicitor general proved by the witness Barrett that, on Monday following the murder, he found several strands of hair on a lathe in the metal room on the second floor, where the negro Conely claims to have found Mary Phagan's body. The solicitor general proved on his cross-examination of the witness Magnolia Kennedy that the hair alleged to have been found on the lathe resembled the hair of Mary Phagan.

SOLICITOR ARGUED POINT.

The solicitor general argued that the finding of this hair was one of the circumstances against Frank; that it had been found by Barrett and had been identified by Magnolia Kennedy as the hair of Mary Phagan, and in his argument to the jury he alluded to it as a circumstance in the evidence against Frank. The solicitor general likewise alluded to it in his brief filed with the supreme court of Georgia.

The defendant here and now offers to show and prove to the court all of the facts herein set forth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material, and that it is an extraordinary state of facts as would probably produce a different result on another trial, and that the said facts were unknown to him and his counsel, having been concealed by the said Harris and the solicitor general, and the same have only come to the knowledge of this defendant and his counsel since the motion for new trial was heard and passed upon, and could not have been sooner

discovered by the exercise of proper diligence. A part of the motion dealing with Duffy's testimony follows:

J. M. Duffy testified on the trial that he worked at the National Pencil factory and was hurt in the metal department by a cut on his forefinger on the left hand; that he went to the office to have it dressed; that it was bleeding pretty freely and a few drops of blood dropped on the floor at the machine where he was hurt; but that the blood did not drop anywhere else but at the machine; that none of it dropped near the dressing room or the water cooler.

This defendant is informed that said witness will now testify the truth, which is as follows:

That he was an employee at the factory during a part of 1912 and while at work there he was injured on the index finger of his left hand; that he worked on a machine on the second floor of the building, in the metal department; that, when he received this injury, there was a vast amount of blood that ran from the wound, a considerable part of which ran on the floor near the machine at which he was at work and which was directly opposite the one Mary Phagan was employed on; that in answer to a subpoena served upon him by one Garner, he met the solicitor, Mr. Dorsey, in his office, and that Mr. Dorsey asked him a great many questions regarding the injury to his finger, how it happened, where it happened, how much blood there was, and what method he employed to staunch the blood; that he did very little except to answer Mr. Dorsey's questions; that he did very little except to answer Mr. Dorsey's questions; that Mr. Dorsey did most of the talking, leading the conversation; that, finally, Mr. Dorsey said that Lemmie Quinn and a boy named Charlie had testified in the case to the effect that he had hurt his hand, and had stopped in front of the dressing room, with his hand extended, allowing the blood to drop upon the floor; that Mr. Dorsey then said:

CHANGES HIS TESTIMONY.

“Now, Mr. Duffy, you know that is not true, and you know that you were not in front of the dressing room at all, and that there was no blood that ran upon the floor, and that, as soon as you injured your finger, you promptly went to the office of Mr. Frank and then to the Atlanta hospital, where Dr. Ballinger waited on you.” Mr. Dorsey then asked what it was he used to stop the blood, and that he replied that he stopped it with a piece of waste; that for some reason he both permitted Mr. Dorsey to ask and answer his questions for him; that he could see precisely how Mr. Dorsey wanted him to testify, and he did testify as suggested by Mr. Dorsey; that after mature deliberation and thought, it is plain to him that he was made to express himself on the witness stand in a manner that he would not have done had he been permitted to have gone on the witness stand and testified to the facts as he knew and remembered them; that he now says that when he was injured his hand did bleed and the blood run upon the tin at the machine he was working on, and did run upon the floor; that, during his conversation with Mr. Dorsey, he, in his leading way, insisted that the witness had gone to the office of Mr. Frank as soon as he had injured his hand, and then went to the office of Dr. Ballinger and had it dressed.

The witness now says that it is possible, and quite probable, that blood dropped from his hand while passing in front of the dressing room, and he is not willing to state that blood did not drop from his hand in front of the dressing room.

The defense commences to strengthen its famous time alibi for Frank by quoting the repudiation of his testimony at the trial by Albert McKnight, the negro witness. First, the time alibi of the defense is set out as follows: That Frank introduced evidence to show he left the factory April 26 at about 1 o'clock, and took a street car home, arriving about 1:20 o'clock; that he took dinner with his family, and left for the factory about 2 o'clock.

McKnight swore at the trial that Frank did not reach his home until about 1:30 and that he remained only five or ten minutes.

McKnight's affidavit repudiating this and the remainder of his story is quoted in the motion.

MRS. SIMMONS' AFFIDAVIT.

On the time theory the motion takes on the affidavit of Mrs. J. B. Simmons, now of Birmingham, who asserts she told the solicitor general soon after the tragedy of hearing screams come from the basement of the factory about 2:30 o'clock on the day of the tragedy, and that the solicitor, after trying by questions to change her story, failed to call her as a witness.

The motion here contains a vigorous attack on the solicitor, charging that he tried to discredit Mrs. Simmons' testimony because at the time she heard the scream the solicitor himself had seen Frank on the streets, and knew he could not be there murdering a girl. This portion of the motion reads as follows:

Defendant further shows that it has come to the knowledge of this defendant since the motion for new trial was denied that on April 26, 1913, between two-thirty (2:30) and three (3) o'clock p. m., on Whitehall Street, that the fact that said Solicitor General Dorsey had seen Frank at about the same time just stated, is the reason that he attempted to discredit the statement made to him by Mrs. J. B. Simmons as outlined above.

Defendant further shows that the theory of the state was, and evidence was introduced at the trial for that purpose, that Mary Phagan was killed by Leo M. Frank on the second floor of the Pencil Company factory between twelve-five (12:05) and twelve-twenty (12:20) o'clock April 26, 1913, and the state's entire case, as presented to the jury, revolved around that theory. The solicitor general proved by the witness Conley that said Conley assisted Leo M. Frank to move the dead body of Mary Phagan between the hour of four minutes to one and thirty (12:56 to (1:30) o'clock) from the second floor to the basement, the said Mary Phagan being dead already when the said Conley picked her up on

the second floor. This evidence of Mrs. Simmons shows the mistake of the state's theory and tends to show that Mary Phagan was in life as late as two-thirty (2:30) p. m., at a time when Frank was away from the factory.

GIRL IS CORROBORATED.

At the trial Miss Helen Kern, a girl witness, testified she saw Frank at Whitehall and Alabama Streets between 1:05 and 1:10 o'clock on the day of the tragedy, when Conley claimed they were together disposing of the body.

In the extraordinary motion three new witnesses corroborate her. Samuel A. Pardee, a well-known business man, who had business acquaintance with Frank, swears he saw him at the corner of Whitehall and Alabama streets, leaning against a trolley post, between 1:03 and 1:05 o'clock on the day of the tragedy. Frank had a paper in his hand and waved it, Mr. Pardee swears, in response to his salutation. A Mrs. Jaffee gives substantially the same testimony. Miss Ethel Harris Miller, a social acquaintance of Frank, swears, she saw him at the same corner between 1 and 1:10 o'clock the same day.

While still dealing with the time element in the case, the motion quotes new testimony to explain the mystery of the broken lock on the back door, and to fasten the crime on Jim Conley. The portion of the motion dealing with this point follows:

Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Mary Rich, which has come to the knowledge of defendant and of his counsel since the original motion for new trial was heard and passed on, and which is as follows that the said Mary Rich knows Jim Conley, and that April 26, 1913, at about 2:15 p. m. she saw Jim Conely come out of the alley immediately in the rear of the National Pencil Company's factory; that the said Jim Conely bought a 20-cent dinner of Mary Rich, who runs a restaurant on wheels facing said alley; that after purchasing said dinner he carried same in his hand and went

back to the aforesaid alley in the direction of the pencil factory, and that the said Mary Rich saw no more of the said Jim Conely during that day.

WOMAN HEARD SCREAMS.

Defendant further shows that one Mrs. J. B. Simmons was passing the factory of the National Pencil Company on the 26th day of April, 1913, at about 2:20 or 2:30 o'clock p. m. and heard screams of a girl or woman emanating from the basement of the factory, which is more fully set forth in ground six hereof and to which full reference is here prayed.

Defendant, further, shows that the factory of the National Pencil evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo M. Frank on the second floor of the Pencil Company's factory between 12:05 and 12:20 April 26, 1913, and the state's entire case as presented to the jury revolved around that theory. The solicitor general attempted to prove by the witness Conley that said Conley assisted Leo M. Frank to move the dead body of Mary Phagan between the hour of 4 minutes to 1 and 1:30 from the second floor to the basement, the said Mary Phagan being dead already when Conley picked her up on the second floor. The witness also testified that he left the front door of the factory about 1:30 p.m. went, to a saloon, corner Hunter and Forsyth streets, and went from there, home, thereby deny that he was in the alley in the rear of the factory as testified to by Mary Rich.

The defense has always charged a conspiracy to blacken Frank's character and to show that he knew and was familiar with Mary Phagan some time prior to the trial.

To this end in the extraordinary motion affidavits of Dewey Hewell, Ruth Robinson, Marie Karst and Miss Mamie Kitchens, all witnesses against Frank at the trial, are quoted.

Miss Karst explains, for instance, that she didn't know the meaning of the word lasciviousness and replied "yes" to the

question, "Is Frank's character for lasciviousness bad?" because Frank had the reputation among the factory employees of being a hard task master.

COACHING IS CHARGED.

Dewey Hewell and Miss Robinson swear that the girl witnesses against Frank, who were gathered in a room waiting to be called to testify, were coached by Maggie Griffin. The Griffin girl they assert told them what to swear when they went on the stand and seemed anxious to testify herself.

Dewey Hewell asserts the woman not only told her what to say, but rehearsed the story with her repeatedly. The Hewell girl testified in effect that she had seen Frank standing very close to Mary Phagan and putting his hand on her arm as he talked to her, and that she had heard him call the girl "Mary." She also testified Frank's character was bad. She was trained to say this by the Griffin woman, she now says, and her story was false.

Miss Robinson alleges she was badgered by the solicitor general in talking with him before she testified, and that she was repeatedly insulted by the statements that the official made to her, and that she thought since she was a court official, that she could do nothing but sit quietly while he charged her with having bad improper relations with Frank. She swears she heard Maggie Griffin telling Dewey Hewell and other girls what they should testify to, and also heard them telling her that they knew nothing against Frank and were afraid to swear falsely. She recognized, when she read the answers to questions by Dewey Hewell, the words the Griffin woman put into the little girl's mouth, she asserts.

Miss Robinson testified at the trial that she heard Frank call the slain "Mary." This statement was not true, she now says.

CHANGES HER STORY.

Miss Mamie Kitchens, who testified to the dressing room incident, when Frank is alleged to have stared at the girls when

they were disrobed, now declares, according to the motion, that she was not given sufficient time to make her testimony clear, and she now tells a story which takes the harmful part away from her former testimony, and corroborates the contention of the defense that Frank went to the room to reprimand the girls for wasting so much time.

Probably the most important of the site's witnesses, who has now repudiated his testimony is C. B. Dalton. Parts of the motion referring to Dalton follow:

Defendant further shows that he should be granted a new trial upon the newly discovered evidence of G. Burtis Dalton, which has come to the knowledge of the defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows: that the said Dalton, at the time of the trial of defendant for the murder of Mary Phagan, resided at the home of one M. W. Barber, at 470 Whitehall Street, that the newspaper accounts of said murder was the general topic of conversation at the boarding house where he was living; that during one of the several conversations Dalton made the remark that he had been to the national Pencil Company's factory several times and confided this to a fellow named R. L. Mann; that he went with a girl to the basement of said National Pencil Company's factory; that the said Dalton thought no more of his remark until one day City Detectives Campbell and Starnes called at his boarding house and told him that the said Mann had reported to them that Dalton knew some bad things against defendant; that the said Dalton at once told the detectives that the information they had received was false, but that so far as his knowledge of defendant went, that the said defendant was a gentleman in every respect; that thereupon the detectives, Campbell and Starnes, laughed at the declaration he had made in defense of defendant as a joke and insisted that Dalton should admit that defendant was a man of bad character and that he had

seen defendant go into closets and dressing rooms with various women and girls at various times at the National Pencil Company's factory and that he, Dalton, had joined defendant on several occasions in acts of immoral conduct with women and girls and that he had on various occasions joined the defendant, and that on these occasions they would all drink beer and have a so-called good time, and that Dalton had seen Jim Conley and defendant on various occasions talking earnestly together, and that women and girls had told him that defendant had committed both natural and unnatural acts with them, and that Dalton had at various times taken women to the basement of the pencil factory for immoral purposes, with the knowledge and consent of defendant, and Detectives Campbell and Starnes told Dalton that they had called on him to see if he would not support the statement of Jim Conley;

NEVER KNEW DEFENDANT.

That Dalton told the detectives referred to that every suggestion they had made was untrue and proceeded to deny separately and collectively every suggestion made to him by Detectives Campbell and Starnes as outlined above: that Dalton told the detectives referred to at that time that he did not know defendant; that he knew nothing against or about the character of defendant and had never seen Mr. Frank go into any closets, dressing rooms or other places with any woman or girl at any time or place, and that he did not know defendant; that he knew nothing against or about the character of defendant and had never seen Mr. Frank go into any closets, dressing rooms or other places with any woman or girl at any time or place, and that he never had joined defendant at any time or place in acts immoral and that he never at any time or place saw defendant in conversation with Jim Conley and that no woman ever told him that defendant had committed either natural or unnatural immoral acts with them or attempted to do so or

asked to do so; that, Dalton told Detectives Campbell and Starnes that he, Dalton, had been in the basement of the National Pencil factory with one Daisy Hopkins, but that he told the detectives then that he never went to the factory with Daisy Hopkins with the knowledge or consent of defendant, but told the detectives at the time of the conversation referred to that he went to the basement with the consent and knowledge of Jim Conley and that the said Conley always received a tip of 25 cents from him for such privilege, and that the said Conley would remain on guard for said Dalton while he was in the basement, with the understanding thoroughly understood between Dalton and Jim Conley that the said Conley would warn Dalton if defendant or any one else should happen to come along and possibly disturb Dalton while he was in the basement, and that said Jim Conley would assist Dalton and Daisy Hopkins to get out of the factory without being seen by any one; that on one occasion said Dalton looked into defendant's office, but that defendant did not see said Dalton, as defendant was busy at the time talking to Daisy Hopkins, who had gone to the factory in Company with said Dalton, for the purpose of drawing \$3 on her salary account; that Dalton saw in defendant's office at the time referred to a lady who he had since learned to be Miss Eula May Flowers, and another woman who dressed like and looked like a factory employee, but that said Dalton saw nothing wrong going on in the office on the occasion referred to, and that there was no evidence that there was or had been any beer drinking or drinking of any kind, and that defendant was sitting at this desk, apparently attending to his business and all other occupants of the office also appeared to be attending to business , and that as soon as Daisy Hopkins had drawn money from her salary account as referred to above, Dalton and the Hopkins woman at once left the factory together and Dalton never saw defendant any more; that if anyone had gained the impression from the evidence Dalton gave at the trial that he

knew or knows anything against the character of the defendant, that he now wants to disabuse their minds of any such false impression and that he wants everyone and everybody to know that he knows absolutely nothing about or against the character of defendant.

THEORY OF STATE.

Defendant further shows that it was the theory of the state that defendant had been in the habit of using his office and the basement of the National Pencil factory for improper purposes, and the solicitor general proved by the witness Jim Conley that defendant had been in the habit of taking girls in his office and in the basement of the factory for improper purposes. The solicitor general further proved by the said Dalton that he knew the defendant, and Daisy Hopkins and Jim Conley; that he had visited the pencil factory three or four or five times, and had been in defendant's office two or three times, and had been down in the basement; that the defendant knew that he was in the basement, that there would be ladies in defendant's office—sometimes two and sometimes one; that he visited the pencil factory with Daisy Hopkins; that said Daisy Hopkins introduced said Dalton to defendant's office before Christmas; that Daisy Hopkins accompanied said Dalton down to the basement; that defendant had coca cola, lemon and lime and beer in his office; that Daisy Hopkins knew defendant and Dalton had seen her talking to him.

Ivy Jones, colored, is another witness used by the state to corroborate parts of Conley's story, and the defense contends that in an affidavit, he has admitted he swore falsely at the trial.

Jones, who was employed by Walker Bros., wholesale grocers in the L. and N. Terminal building at the time of the murder, testified he met Conley at the corner of Forsyth and Hunter streets in a saloon about 2 o'clock, and that he and Conley walked toward the latter's home together. He will now testify, according to the motion, that he did not see Conley at all that day.

The new testimony of Helen Ferguson is included in the motion, where she says that at the point where the defense claims Conley attacked Mary Phagan, that he approached and frightened her on the Saturday preceding the tragedy.

The motion stresses her testimony as important because it shows the disposition of the negro. Conley, who, the defense claims, killed Mary Phagan, toward the girls of the factory.

The motion deals with the newly-discovered evidence that one of the notes was written on an order blank used four years before the date of the murder is the following language:

REGARDING THE NOTES.

Defendant further shows that he should be granted a new trial upon the newly discovered evidence which has come to the knowledge of defendant and of his counsel since the original motion for new trial was heard and passe don and which is as follows: that the notes found by the body of Mary Phagan and which it is admitted were written by Jim Conley, were written on waste paper found in the basement of the factory by the body of Mary Phagan; that on the note written on yellow carbon order blank, about eight lines from the bottom of said sheet is a faint scrawl of the name "H. F. Becker" sought to be erased, but which is clearly discernible under the microscope; that also on said note is the date "Sept. 1909," also sought to be erased but also discernible under a powerful microscope, together with the serial number "1018"; that said sheet was a duplicate carbon order blank of a requisition sent to the Cotton States Belting and Supply Company in September, 1909, by the said H. F. Becker, who was master mechanic at the National Pencil factory at that time, and whose business it was to secure and obtain supplies for the pencil factory, it being his practice to write out the requisition, sign it with this name and send it by an apprentice to the place from where he desired to secure the supplies; that it was the practice and custom of the said Becker to send the original requisition to

the place where he secured the supplies and to retain a carbon duplicate copy thereof in his own office on the fourth floor of the pencil factory; that the said duplicate requisitions were contained in pads which remained in his office on the fourth floor of the pencil factory; that from the time Becker first entered the employ of the Pencil Company, until about January 1, 1912, he was allowed to go obtain supplies without obtaining the sanction or authority of any one else in the factory, his department being conducted entirely independent of other departments, and the requisitions signed by him being sent out and honored without passing through any other office of the factory; that it was his practice to keep his pads of duplicate requisitions in his office, and after having no use for same, to send them down in the basement of the factory with the other trash; that on the 27th day of December, 1912, the said Becker left the employ of the pencil factory, and that within a few weeks thereafter his office on the fourth floor of the factory was cleaned out and the trash, including papers and old pads, was gathered and taken to the basement and placed on the trash pile; that the pad from which the sheet on which Conley wrote his second note was among the pads that were carried down there from Becker's office and dumped into the basement on the trash pile and that Conley picked up said sheet from off the trash pile and wrote the aforesaid note thereon in the basement of the factory.

NUMBERS CORRESPOND.

Defendant further shows that the serial number on said note namely, "1018"-corresponds to the serial number of the requisition made on the Cotton States Belting and Supply by said Becker in September, 1909, the preceding serial numbers, 1016, 1017 being dated September 10, 1909, and serial number 1019, the one immediately following the sheet on which Conley wrote, being dated October 6, 1909; that the serial numbers of the order pads used at the time the

murder was committed was—, and that at that time there were no order blanks with serial numbers as low as No. 1018 in any part of the factory, excepting in the basement on the trash pile.

Defendant further shows that none of the order pads having the date “190” had been in the defendant’s office since January 1, 1911; that since January 1, 1911, all pads that had been used for requisitions were printed with the date “191”; that on April 26, 1913, there were no “190” order pads in the factory, excepting on the trash pile in the basement.

Defendant further shows that it was the theory of the state that the crime was committed on the second floor of the factory and proved by Conley that the notes found by the body were written by Conley at defendant’s dictation in defendant’s office on the second floor of the factory, and that the defendant pulled the sheet on which said note was written from a pad lying on his desk in his office on the second floor of the factory.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

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Press Comment on the Frank Trial

(Louisville Courier-Journal.)

Without expressing any opinion as to the guilt or innocence of Leo Frank, who is under sentence of death in Atlanta on the

charge of murdering a young working girl, The Atlanta Journal insists strongly that Frank is entitled to a new trial.

The crime with which Frank is charged was most atrocious. It caused great public indignation. The defendant was tried while excitement was at white heat. The mob spirit was in evidence in and around the court room during the hearing. The judge who tried the case was unable to prevent demonstrations hostile to the defendant. The police could not control the crowds which surrounded the court house. The militia was held to readiness to respond in case of an outbreak of mob violence. There was small prospect of the man getting a fair trial under such circumstances.

The extreme penalty of the law is but mild punishment for the man who took the life of the Atlanta working girl. The crime is one that calls for justice, but two wrongs do not make a right. If the courts of Georgia should hang an innocent man it would be deplorable and irreparable. If Frank really is guilty there will be plenty of time to convict him. The state would lose no ground by giving him a new and fair trial. Certainly, his former trial lacked many of the essential elements of fairness.
